IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7764 of 1990

HONOURABLE MR.JUSTICE KS JHAVERI

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RAVIOILINDUSTRIES - Petitioner(s)
Versus
STATEOFGUJARAT & 1 - Respondent(s)

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Appearance :
MR JD AJMERA for Petitioner(s) : 1,
MR VM PANCHOLI, AGP, for Respondents

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI
Date : 04/10/2005

ORAL JUDGMENT

1.0 This petition is directed against the order passed by the respondent no.1 dated 17.11.1989 in Appeal No.62/88 to the extent the same is against the petitioner, whereby the respondent no.1 has partly allowed the appeal of the petitioner and ordered to confiscate 740 Kgs of oil and to release the remaining oil.

2.0 The short facts of the case are as under:

2.1 The petitioner is running his business at the address mentioned in the petition. Officer of Civil Supplies Department visited the premises of the petitioner on 27.8.1987 and after inspection seized certain quantity of groundnut oil. Necessary panchnama was prepared.

2.2 A show cause notice was issued to the petitioner on 26.9.1987 alleging that (i) production of groundnut oil is shown less in the months of May and August 1987, (ii) receipt for groundnut of 600 kgs was not issued which was received on 27.8.1987 and the same was not shown in the register; and (iii) groundnut oil was not in the tank as per the measurement and thereby made such arrangement to mislead and has kept wrong account. The show-cause notice was for the alleged irregularities for the breach of Rules 23 and 24 of the Gujarat Essential Commodities

(Licence, Control and Stock Declaration) Order, 1981 (hereinafter referred to as the said Order) and condition no.4 of the licence.

2.3 The petitioner submitted his reply. After considering the said reply the respondent passed an order dated 4.1.1988 ordering to confiscate 1816 kgs. of oil and remaining stock was ordered to be released.

2.4 Against the order passed by the respondent no.2 the petitioner preferred an appeal before respondent no.1 being Appeal No.62/88. The respondent no.1 by order dated 17.11.1989 partly set aside the order of respondent no.2 and partly allowed the appeal by holding that out of 1816 kgs of oil confiscated, 750 kgs. oil may be confiscated and the remaining oil may be released.

2.5 Against the order passed by the respondent

no.1 the petitioner preferred a review application before the authority which came to be rejected vide communication dated 29.3.1990. It is against the aforesaid order the present petition has been filed.

3.0 Mr. J.D. Ajmera, learned Advocate for the petitioner, submitted that the first appropriate authority has not given appropriate notice as referred under the At and therefore the impugned order has been passed in violation of principles of natural justice.

3.1 The second contention raised by Mr. Ajmera is that though the first authority has held that the petitioner has committed breach of only two conditions, the revisional authority, while reducing the penalty has held that the petitioner has committed breach of all the three conditions.

3.3 Mr. Ajmera next contended that the order of

confiscation is without application of mind and on this ground the impugned order deserves to be quashed and set aside.

3.4 Mr. Ajmera has relied upon a decision in the case of Devikadevi Vs. state of Gujarat, reported in 1983(1) GLR 215, wherein it is held that the High Court will be entitled to interfere under Article 227 of the Constitution with the findings reached by the authorities below if it is demonstrated that the findings reached by them especially by the lower appellate court suffered from any manifest error or the findings are such which cannot reasonably be arrived at in the light of the evidence on record.

4.0 Mr. V.M. Pancholi, learned AGP appearing for the respondents submitted that the respondent no.1 has rightly passed the order. He submitted that while considering the reply the respondent authority has considered serious irregularities

of non-maintaining of the stock and the final product of groundnut oil and considering the gravity of the serious irregularity the authority has reduced the penalty which is reasonable and no interference of this Court is warranted.

5.0 Heard the learned counsel for the respective parties.

6.0 With regard to the contention that the first authority has not given any notice, it is required to be noted that such a contention was not raised in the earlier proceedings. However, it cannot be said that the petitioner had no opportunity at all to explain his case before the authorities.

7.0 As regards the order of respondent no.2 is concerned, he had decided two points against the petitioner and even according to the petitioner himself, as regards issue no.3, no

decision was rendered by the respondent no.2 in the order. However, the revisional authority has considered the same and passed appropriate orders. Merely because the respondent no.2 has not considered the issue cannot be a ground to to reverse the order of respondent no.1. In fact the respondent no.1 has considered the case in favour of the petitioner and he has given cogent and convincing reasons for the same.

8.0 Looking to the record of the case it is clear that the respondent authorities have appreciated the facts on record. The respondent no.2 came to the conclusion that minimum 27% of production is bound to occur and lesser production than the same cannot be believed.

8.1 As regards the second issue, the respondent no.2 has not believed the explanation of the petitioner and it was found that the petitioner has deliberately not mentioned about the stock in

the register. Moreover, in absence of any contrary evidence on record, the respondent no.1 has come to the conclusion that the irregularity no.3 is proved. There is nothing on record to show that the petitioner has maintained the stock register and therefore, it cannot be said that there is any non-application on the part of the respondent authority.

9.0 From the record it is apparent that the stock register was not maintained and both the authorities have found that there were serious irregularities with regard to the quality and stock of the goods in question.

9.1 It cannot be said that said that the findings reached by the authorities below suffered from any manifest error. It cannot be said that such findings cannot be arrived at in the light of the evidence on record. Even otherwise the object in enacting the the Legislation is to control the

movement of essential commodities which are meant for the benefits of public at large and when any irregularity is found, the natural course is to pass orders against such offenders. I, therefore, do not find any merits in the submissions made by the learned counsel for the petitioner.

10.0 In the case of Patel Ambaram Kuberbhai Vs. State of Gujarat, reported in 1998(2) GLH 533 it is held that if there is no intention of black-marketing or hoarding on the part of the person committing breach of the provisions of the order, the Court may exercise discretion by reducing penalty. In the present case the respondent no.1 has already reduced the penalty and therefore I do not find any reason to further reduce the penalty especially when the petitioner is unable to point out anything from the record for exercise of such discretion.

10.1It is also a well settled law that even if a

second view is possible, this Court cannot substitute its decision with that of the competent authorities.

11.0 In the premises aforesaid, there are no merits in the petition and the same is accordingly rejected. Rule is discharged with no order as to costs. Interim relief, if any stands vacated. The bank guarantee given by the petitioner shall be encashed.

[K.S. JHAVERI, J.]

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